

RESOLUTION NO. 11-19

RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK AUTHORIZING THE SALE AND ISSUANCE OF CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK TAX-EXEMPT VARIABLE RATE DEMAND INDUSTRIAL DEVELOPMENT REVENUE BONDS (BAY PHOTO, INC. PROJECT), SERIES 2011A IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$8,775,000 AND CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK TAXABLE VARIABLE RATE DEMAND INDUSTRIAL DEVELOPMENT REVENUE BONDS (BAY PHOTO, INC. PROJECT), SERIES 2011B IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$1,050,000 TO PROVIDE FINANCIAL ASSISTANCE FOR THE DEVELOPMENT OF CERTAIN ECONOMIC DEVELOPMENT FACILITIES, PROVIDING THE TERMS AND CONDITIONS OF THE SALE AND ISSUANCE OF SAID BONDS AND OTHER MATTERS RELATING THERETO, AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS HEREIN SPECIFIED

WHEREAS, the California Infrastructure and Economic Development Bank (the "I-Bank") was established pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (California Government Code Section 63000 and following) (the "Act"), for the purpose of promoting economic development; and

WHEREAS, the I-Bank is authorized to issue tax-exempt and taxable revenue bonds to provide financing for economic development facilities (as defined in the Act) located in the State of California (the "State"); and

WHEREAS, Bay Photo, Inc., a California corporation (the "Applicant") has submitted an application to the I-Bank for assistance in financing the cost of acquisition, construction, restoration, improvement, renovation, equipping and general development of the real property and improvements located at 900, 915 and 920 Disc Drive, Scotts Valley, California 95066, consisting of three parcels of land totaling approximately 17 acres, with three buildings and related improvements totaling approximately 140,000 square feet (collectively, the "Disc Drive Facilities"), and (b) pay certain costs of issuance in connection with the issuance of the Series 2011 Bonds; and

WHEREAS, the Applicant has notified the I-Bank that the borrower in connection with such financing will be the Applicant and Sammie Rae Abitbol, LLC, a California limited liability company (collectively, the "Borrower"); and

WHEREAS, on July 26, 2011, the Board of Directors of the I-Bank adopted its resolution 11-15 approving the issuance of tax-exempt bonds to finance the Disc Drive Facilities (the "Initial Resolution"); and

WHEREAS, the Borrower has requested the I-Bank to issue a series of taxable bonds, in addition to the tax-exempt bonds approved pursuant to the Initial Resolution, to refinance the cost of the acquisition of the real property and improvements located at 2959 Park Avenue, Soquel, California 95073 (the "Park Avenue Facilities" and, together with the Disc Drive Facilities, the "Facilities"); and

WHEREAS, the Borrower has represented that it will use the Disc Drive Facilities for manufacturing and distributing professional quality photographic prints, large format prints, canvas prints, metal prints, and other products or for the manufacture of other tangible personal property, which operation of the Disc Drive Facilities is consistent with the definition of an economic development facility in the Act, and that the Disc Drive Facilities will be consistent with any existing local or regional comprehensive plan; and

WHEREAS, the Borrower has represented that it will use the Park Avenue Facilities for manufacturing and distributing professional quality photographic prints, large format prints, canvas prints, metal prints, or other commercial activities, which operation of the Park Avenue Facilities is consistent with the definition of an economic development facility in the Act, and that the Park Avenue Facilities will be consistent with any existing local or regional comprehensive plan; and

WHEREAS, for the sake of clarity, the Borrower has requested that the I-Bank amend and restate its Initial Resolution so that all approvals related to the issuance of Bonds for the benefit of the Borrower may be combined into one resolution; and

WHEREAS, for these purposes, the Borrower has requested the I-Bank to (a) authorize the issuance of obligations in two series, entitled (i) California Infrastructure and Economic Development Bank Tax-Exempt Variable Rate Demand Industrial Development Revenue Bonds (Bay Photo, Inc. Project), Series 2011A, in an aggregate principal amount not to exceed \$8,775,000 (the "Series 2011A Bonds"), and (ii) California Infrastructure and Economic Development Bank Taxable Variable Rate Demand Industrial Development Revenue Bonds (Bay Photo, Inc. Project), Series 2011B, in an aggregate principal amount not to exceed \$1,050,000 (the "Series 2011B Bonds" and, together with the Series 2011A Bonds, the "Bonds"), (b) provide for the sale of the Bonds, (c) provide for the loan of proceeds of the sale of the Bonds to the Borrower to finance and refinance the costs of the Disc Drive Facilities and the Park Avenue Facilities, including certain costs of issuance of the Bonds (the "Project"); (d) provide for the payment of the principal of, premium, if any, and interest on the Bonds with revenues derived from the Borrower's repayment of that loan; and (e) take and authorize certain other actions in connection with the foregoing; and

WHEREAS, the Borrower has represented that it will obtain an irrevocable direct-pay letter of credit to be issued by Comerica Bank (the "Comerica Bank") for the benefit of the holders of the Bonds and the purpose of securing the Bonds (the "Credit Facility"), which will support an initial rating on the Bonds of A/FI from Fitch Ratings and which Credit Facility is expected to remain in effect for five years unless a comparable substitute credit facility is provided by Borrower, the Bonds are held by Comerica Bank, the Bonds are converted to bear interest at a fixed rate and are rated no lower than "A3" by Moody's Investors Service, or "A-" by Standard and Poor's or Fitch Ratings or the Bonds are redeemed; and

WHEREAS, the I-Bank may not issue the Bonds to finance the Project until the Board of Directors of the I-Bank makes certain determinations relating to the Project as required by the Act; and

WHEREAS, there is now on file with the Secretary of the Board of Directors (the “Secretary”) the following:

(a) a proposed form of a loan agreement to be entered into by and between the I-Bank and the Borrower, providing for the loan of the proceeds of the Bonds to the Borrower (the “Loan Agreement”);

(b) a proposed form of an indenture of trust to be entered into between the I-Bank and Wells Fargo Bank, National Association (the “Trustee”), providing for the authorization and issuance of the Bonds to be dated the date of delivery thereof (the “Indenture”);

(c) a proposed form of a bond purchase contract to be entered into by and among the I-Bank, the Treasurer of the State and Gates Capital Corporation, as underwriter (the “Underwriter”), and approved by the Borrower providing for the sale of the Bonds (the “Bond Purchase Contract”);

(d) a proposed form of limited offering memorandum to be used by the Underwriter in connection with the offering and sale of the Bonds (the “Limited Offering Memorandum”); and

(e) a proposed form of tax regulatory agreement to be entered into by and between the I-Bank and the Borrower, relating to the tax-exempt status of the interest on the Series 2011A Bonds (the “Tax Regulatory Agreement”);

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank, as follows:

Section 1. The above recitals are true and correct.

Section 2. Upon adoption of this resolution, which amends and restates the Initial Resolution, the Initial Resolution shall be deemed to be void and of no further force or effect.

Section 3. Pursuant to Sections 63046 and 63047 of the Act, and based upon representations made by the Borrower, the Board of Directors of the I-Bank hereby finds and determines that:

(a) the Facilities are located within the State;

(b) the Borrower is capable of meeting its payment obligations under the Loan Agreement as approved by this resolution, which finding is based in particular on the Borrower’s ability to satisfy the requirements imposed by Comerica Bank to the issuance of the Credit Facility;

(c) the Borrower is capable of meeting the obligations other than payment obligations incurred by the Borrower under the agreements approved by this resolution;

(d) the payments to be made by the Borrower to the I-Bank under the Loan Agreement as approved by this resolution are adequate to pay all current expenses of the I-Bank in connection with the financing and to make all the payments on the Bonds;

(e) the proposed financing is appropriate for the Project; and

(f) the Facilities are consistent with any existing local or regional comprehensive plans.

Section 4. Based on the information provided and representations made by the Borrower, the Board hereby finds and determines that the issuance of the Bonds will provide clear economic benefit to the communities in which the Facilities are located in that the Project will result in the creation of new jobs in such community.

Section 5. The I-Bank authorizes and approves the loan of the proceeds of the Bonds to the Borrower in order to finance and refinance the costs of the Project pursuant to the terms and provisions of the loan agreement approved by this resolution. The proposed form of loan agreement on file with the Secretary is hereby approved and the Chair of the Board, the Chair's designee, the Executive Director of the I-Bank (the "Executive Director") or the Executive Director's assignee, each acting alone, is hereby authorized and directed, for and on behalf and in the name of the I-Bank, to execute and deliver to the Borrower the Loan Agreement in substantially said form, with such changes and insertions therein as may be necessary or appropriate to cause the same to carry out the intent of this resolution and as the officer or official executing the same, with the advice of counsel to the I-Bank, may require or approve, such requirement or approval to be conclusively evidenced by the execution and delivery thereof. The Secretary is authorized to attest to the I-Bank's execution of the Loan Agreement.

Section 6. The proposed form of indenture of trust on file with the Secretary is hereby approved and the Executive Director, the Executive Director's assignee, the Chair of the Board, or the Chair's designee, each acting alone, is hereby authorized and directed, for and on behalf and in the name of the I-Bank, to execute and deliver to the Trustee the Indenture in substantially said form, with such changes and insertions therein as may be necessary or appropriate to cause the same to carry out the intent of this resolution and as the officer or official executing the same, with the advice of counsel to the I-Bank, may require or approve, such requirement or approval to be conclusively evidenced by the execution and delivery thereof. The Secretary is authorized to attest to the I-Bank's execution of the Indenture.

Section 7. The proposed form of bond purchase contract on file with the Secretary is hereby approved and the Chair of the Board, the Chair's designee, the Executive Director or the Executive Director's assignee, each acting alone, is hereby authorized and directed, for and on behalf and in the name of the I-Bank, to execute and deliver to the Underwriter and the Treasurer of the State the Bond Purchase Contract in substantially said form, with such changes and insertions therein as may be necessary or appropriate to cause the same to carry out the intent of this resolution and as the officer or official executing the same, with the advice of counsel to the

I-Bank, may require or approve, such requirement or approval to be conclusively evidenced by the execution and delivery thereof. At the request of the Borrower, the Underwriter is appointed as the underwriter and remarketing agent for the Bonds. The Treasurer, as agent of sale for the I-Bank's bonds, is hereby requested to sell the Bonds at negotiated sale, at such prices and at such initial interest rates as he may determine in accordance with the Indenture. Notwithstanding Section 63074(d) of the Act to the contrary, such sale may take place at any time within one hundred eighty (180) days of the adoption of this resolution, or at such later date approved by the Executive Director or the Executive Director's assignee which is not later than the date three hundred sixty (360) days of the adoption of this resolution.

Section 8. The proposed form of tax regulatory agreement on file with the Secretary is hereby approved and the Executive Director, the Executive Director's assignee, the Chair of the Board or the Chair's designee, each acting alone, is hereby authorized and directed, for and in the name and on behalf of the I-Bank, to execute and deliver to the Borrower and bond counsel to the I-Bank the Tax Regulatory Agreement in substantially said form, with such changes and insertions therein as may be necessary to cause the same to carry out the intent of this resolution and as the officer or official executing the same, with the advice of the counsel to the I-Bank, may require or approve, such requirement or approval to be conclusively evidenced by the execution and delivery thereof.

Section 9. The sections entitled "THE ISSUER" and "NO LITIGATION – The Issuer" in the proposed preliminary form of Limited Offering Memorandum on file with the Secretary are hereby approved. The Executive Director, the Executive Director's assignee, the Chair of the I-Bank, or the Chair's designee, each acting alone, is hereby authorized and directed, for and in the name and on behalf of the I-Bank, to execute a certificate or certificates in a form or forms which, with the advice of counsel to the I-Bank, is or are acceptable to the officer or official executing the same, to the effect that such portions of the Limited Offering Memorandum in either its preliminary or final form, with such insertions and changes therein as may be necessary or appropriate to cause the same to carry out the intent of this resolution and as the officer or official executing the same, with the advice of counsel to the I-Bank, may require or approve, are "deemed final" as of the date of each or any such certificate. The Underwriter is hereby authorized to distribute copies of the Limited Offering Memorandum in preliminary form to the prospective purchasers of the Bonds and the Limited Offering Memorandum in final form in connection with the sale of the Bonds.

Section 10. The I-Bank approves the issuance on a tax-exempt basis of not to exceed \$8,775,000 aggregate principal amount of the Series 2011A Bonds and on a taxable basis of not to exceed \$1,050,000 aggregate principal amount of the Series 2011B Bonds for the Project in accordance with the terms of this resolution and the terms of and to be secured by the Indenture. Payment of the principal of, premium, if any, and the interest on, the Bonds shall be made solely from the revenues to be received by the I-Bank pursuant to the Loan Agreement and the Indenture, the purchase price of the Bonds shall be payable solely from the proceeds of the remarketing of the Bonds and amounts made available therefore under the Indenture (including amounts made available therefore by draws upon the Credit Facility or a permitted substitute credit facility). The Bonds shall not be deemed to constitute a debt or liability of the I-Bank (except to the limited extent provided in the Indenture) or the State of California. Neither the full faith and credit of the State or the I-Bank, nor the taxing power of the State is pledged to the

payment of the principal or purchase price of, or premium, if any, or interest on, the Bonds. The Bonds shall be dated the date of their issuance and shall be paid in lawful money of the United States at the time or times and place or places provided in the Indenture. The Bonds shall be in the forms and the denominations as provided in the Indenture, mature on the date or dates provided in the Indenture which shall be not later than 30 years from the date of issuance thereof, be subject to redemption as provided in the Indenture, shall carry the registration privileges provided in the Indenture and shall bear interest at a variable rate or rates to be determined in accordance with the Indenture, which rates shall not to exceed the lesser of twelve percent (12%) per annum or the maximum rate of interest on the Bonds permitted by the laws of the State.

Section 11. The Chair of the Board, the Chair's designee, the Executive Director or the Executive Director's assignee, each acting alone, is hereby authorized and directed, for and in the name and on behalf of the I-Bank, to execute, by manual or facsimile signature, the Bonds, in an aggregate principal amount not to exceed the amount authorized hereunder, in accordance with the terms of this resolution and the Indenture and in the forms set forth in the Indenture.

Section 12. The Bonds, when executed as provided in this resolution, shall be delivered to the Trustee for authentication by the Trustee pursuant to the Indenture. The Trustee is hereby requested and directed to authenticate and register the Bonds so delivered by executing the appropriate certificate of authentication and registration appearing thereon. The Trustee is hereby requested and directed to deliver the Bonds, when duly executed and authenticated, to The Depository Trust Company, New York, New York or its agent (the "Depository") on behalf of the purchasers thereof in accordance with written instructions executed on behalf of the I-Bank by the Executive Director, the Executive Director's assignee, the Chair of the Board, or the Chair's designee, which instructions each signatory, acting singly, is hereby authorized and directed, for and on behalf and in the name of the I-Bank, to execute and to deliver to the Trustee. Such instructions shall provide for the delivery of the Bonds to the Depository, on behalf of the purchasers thereof, upon payment of the purchase price therefor.

Section 13. The Executive Director, the Executive Director's assignee, the Chair of the Board or the Chair's designee, each acting alone, is hereby authorized, for and on behalf of and in the name of the I-Bank, to execute and deliver all certificates and instruments (including, without limitation, letters of representations and certificates of authority and tax forms required by the Internal Revenue Service in connection with the issuance of the Bonds) which they or counsel to the I-Bank may deem necessary or advisable to consummate the issuance, sale and delivery of the Bonds, and otherwise to effectuate the purposes of this resolution.

Section 14. All actions heretofore taken by the officers and employees of the I-Bank with respect to the approval, issuance and sale of the Bonds are hereby approved, confirmed and ratified. The officers of the I-Bank and their authorized assignees, designees, deputies, agents and counsel are hereby authorized and directed, jointly and severally, to perform their duties and to execute and deliver any and all certificates which they or counsel to the I-Bank may deem necessary or advisable in order to consummate the issuance, sale and delivery of the Bonds and otherwise to effectuate the purposes of this resolution.

Section 15. This resolution shall take effect immediately upon its passage.

PASSED, APPROVED, AND ADOPTED at a meeting of the California Infrastructure and Economic Development Bank on August 23, 2011, by the following vote:

AYES: REYES, LUJANO, JIMENEZ, ARMSTRONG, RICE


NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

By 
Stanton C. Hazelroth, Executive Director

Attest:

By 
Roma Cristia-Plant,
Secretary to the Board of Directors